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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/586,550 | 05/31/2000 | Lee Benzinger | NA11P002/00.056.01 | 5992 |
| 28875 | 7590 | 02/13/2006 | EXAMINER | |
| Zilka-Kotab, PC P.O. BOX 721120 SAN JOSE, CA 95172-1120 | | | KESACK, DANIEL | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3624 | |
| DATE MAILED: 02/13/2006 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 09/586,550 | Applicant(s) BENZINGER ET AL. | |
| | Examiner Dan Kesack | Art Unit 3624 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 19-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17, 9, 11-17, 19-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This application has been reviewed. Original claims 3-5, 7, 13-17, 22, 23, amended claims 1, 2, 6, 9, 11, 12, 19-21 and new claims 24, 25, are currently pending. Claims 8, 10 and 18 have been cancelled.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on August 9, 2005 has been entered.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-7, 9, 11-17, 19-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webber Jr., U.S. Patent No. 6,167,378 in view of Kase, U.S. Patent No. 6,182,055.

Claims 1, 11, 20, Webber discloses a method and apparatus for dynamic adaptation of a system in accordance with a contract with criteria associated therewith, governing a security related interaction between a plurality of components utilizing the criteria of the contract, the components including an intrusion detection module which is subject to the governing (column 5 lines 4-15, column 8 lines 59-65), determining

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whether the security related interaction between the components meets the criteria (column 7 lines 21-26, column 9 lines 53-56, column 15 lines 13-24), and adapting the security related interaction between the components upon the criteria of the contract not being met (column 12 lines 5-11, column 15 lines 13-24) , advertising a capability to a control component which handles contract negotiations, receiving a proposed contract based on the capability, accepting a proposed contract, and accepting a seal message (column 8 lines 25-38).

Claims 1, 11, Webber fails to teach receiving and storing a fallback contract and replacing the proposed contract with a fallback contract upon requirement, requirement consisting of a situation where the operation under the proposed contract does not meet criteria of a cost model, and a proposed contract selected from a predetermined set.

Kase discloses a plurality of connected inferring units that automatically negotiate with each other to form a contract governing how the units interact with each other, for the purpose of allocating limited resources for use among all the units when contention of resources occurs.

Kase teaches gathering a set of proposed contracts, receiving and storing a fallback contract (column 13 lines 42-51), and replacing the proposed contract with the fallback contract if required, in the case that the proposed contract is unable to meet the required criteria. Examiner notes, as stated above (Re: claims 4, 14), Webber teaches the contract containing a cost model criteria. It would be obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the invention of Webber to

include the teachings of Kase because dynamic systems constantly change, it is impossible to create a criteria which can account for every variation in operating conditions, and a fallback contract provides for alternate configurations.

Claims 2, 12, Webber teaches the security related interaction between the components is adapted by adjusting the contract (column 6 lines 37-67, column 7 lines 21-26).

Claims 3, 13, Webber teaches the contract is adjusted by a method selected from the group consisting of deactivation of the contract, modification of the contract, deletion of the contract, and activation of a different contract (column 8 lines 65-67).

Claims 4, 14, Webber teaches the contract including a cost model criteria (column 13 lines 24-28, column 14 lines 4-24).

Claims 6, 7, 16, 17, Webber teaches the criteria is based on performance and service provisioning (column 14 lines 4-24).

Claims 9, 19, Webber teaches the components including the intrusion detection module and an analysis module (column 14 lines 4-24, column 15 lines 25-43).

Claim 21, Webber teaches governing a security related interaction between a plurality of components utilizing the criteria of the contract, the components including a plurality of intrusion detection modules, and at least one firewall which is subject to the governing (column 5 lines 4-15, column 8 lines 59-65, column 14 lines 4-11), determining whether the security related interaction between the components meets the criteria utilizing an analysis module (column 7 lines 21-26, column 9 lines 53-56, column 15 lines 13-24), and adapting the security related interaction between the components upon the criteria of the contract not being met utilizing the analysis module (column 12 lines 5-11, column 14 lines 4-24, and column 15, lines 13-43), wherein the security related interaction between the components is adapted by adjusting the contract by a method selected from the group consisting of deactivation of the contract, modification of the contract, deletion of the contract, and activation of a different contract (column 8 lines 65-67), advertising a capability to a control component which handles contract negotiations, receiving a proposed contract based on the capability, accepting a proposed contract, and accepting a seal message (column 8 lines 25-38).

Claim 21, Webber fails to teach receiving and storing a fallback contract and replacing the proposed contract with a fallback contract upon requirement, requirement consisting of a situation where the operation under the proposed contract does not meet criteria of a cost model, and a proposed contract selected from a predetermined set.

Kase discloses a plurality of connected inferring units that automatically negotiate with each other to form a contract governing how the units interact with each other, for

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the purpose of allocating limited resources for use among all the units when contention of resources occurs.

Kase teaches gathering a set of proposed contracts, receiving and storing a fallback contract (column 13 lines 42-51), and replacing the proposed contract with the fallback contract if required, in the case that the proposed contract is unable to meet the required criteria. Examiner notes, as stated above (Re: claims 4, 14), Webber teaches the contract containing a cost model criteria. It would be obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the invention of Webber to include the teachings of Kase because dynamic systems constantly change, it is impossible to create a criteria which can account for every variation in operating conditions, and a fallback contract provides for alternate configurations.

Claim 22, Webber teaches the intrusion detection modules are adapted for communicating information to the analysis module for detecting intrusions (column 14 lines 44-67, column 15 lines 1-4).

Claim 23, Webber teaches information includes generalized intrusion detection objects (column 15, lines 1-4).

Claims 24, 25 Webber fails to teach receiving and storing a fallback contract and replacing the proposed contract with a fallback contract upon requirement, requirement

consisting of a situation where the operation under the proposed contract does not meet criteria of a cost model, and a proposed contract selected from a predetermined set.

Kase discloses a plurality of connected inferring units that automatically negotiate with each other to form a contract governing how the units interact with each other, for the purpose of allocating limited resources for use among all the units when contention of resources occurs.

Kase teaches gathering a set of proposed contracts, receiving and storing a fallback contract (column 13 lines 42-51); and replacing the proposed contract with the fallback contract if required, in the case that the proposed contract is unable to meet the required criteria. Examiner notes, as stated above (Re: claims 4, 14), Webber teaches the contract containing a cost model criteria. It would be obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the invention of Webber to include the teachings of Kase because dynamic systems constantly change, it is impossible to create a criteria which can account for every variation in operating conditions, and a fallback contract provides for alternate configurations.

Claims 5, 15, Webber fails to teach the cost model criteria being based on resource utilization. Kase teaches negotiation according to a cost model criteria which allocates limited resources (column 1 lines 62-67 and column 8 lines 58-61). It would be obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the invention of Webber to include the teaches of Kase because in a situation

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where resources are limited, it is desirable to form contracts where resources are allocated so as to produce the best results, and minimize loss.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Kesack whose telephone number is 571-272-5882. The examiner can normally be reached on M-F, 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 571-272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



HANI M. KAZIMI
PRIMARY EXAMINER